

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

CONSULTUS, LLC, and  
COMMODITRADE, LLC, d/b/a SPROUT  
SOLUTIONS,

Plaintiffs,

vs.

CPC COMMODITIES, AND ISTT, INC.,

Defendants.

Case No. 4:19-cv-00821-FJG

**ORDER**

On September 29, 2022, the Special Master filed his recommendation regarding Attorneys' Eyes Only Designations Under the Protective Order (Doc. # 429). The Special Master states that in response to a subpoena served by defendant ISTT, the Federal Retirement Thrift Investment Board, produced source code called Application Security Administrator version 2.0 ("ASA 2.0"), but did not designate the ASA 2.0 source code with any level of confidentiality under the terms of the Protective Order. Plaintiffs are seeking to designate the ASAS 2.0 Source code as "Highly Confidential – Attorney's Eyes Only" ("AEO") under the terms of the Protective Order. Defendants object to the designation stating that plaintiffs have failed to establish ownership in ASA 2.0, the sufficiency of the confidential nature of the ASA 2.0 source code under the Protective Order and their right to so designate materials not produced by them.

After reviewing the parties' letter briefs, the Special Master made the following recommendations: 1) Plaintiff submitted enough evidence to sustain their prima facie burden in the narrow context of the Protective Order to assert an AEO designation; 2)

Modification of the Protective Order to allow plaintiffs to designate ASA 2.0 as AEO even though they are not the producing party. The Special Master recommends that the Court sua sponte modify the Protective Order to allow a non-producing party to designate material as AEO that otherwise satisfies the requirements for AEO designation. The Court, after an independent review adopts and incorporates by reference herein, the Special Master's findings and conclusions. The Court will enter a modified Protective Order to allow a non-producing party to designate material as AEO.

Date: October 25, 2022  
Kansas City, Missouri

**S/ FERNANDO J. GAITAN, JR.**  
Fernando J. Gaitan, Jr.  
United States District Judge